

COMPLAINT INVESTIGATION SUMMARY

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| COMPLAINT NUMBER: | 2101.04 |
| COMPLAINT INVESTIGATOR: | Sally Cook |
| DATE OF COMPLAINT: | March 10, 2004 |
| DATE OF REPORT: | April 8, 2004 |
| REQUEST FOR RECONSIDERATION: | yes/Revised May 7, 2004 |
| DATE OF CLOSURE: | May 12, 2004 |

COMPLAINT ISSUES:

Whether the Monroe County Community School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, by not implementing the behavioral interventions and accommodations in the student's behavioral intervention plan (BIP).

511 IAC 7-27-6(a)(12) or 511 IAC 7-29-5 by failing to develop a BIP as defined in 511 IAC 7-17-8.

511 IAC 7-27-6(a) by failing to ensure the student's IEP contains a statement of measurable annual goals that describe what the student can be expected to accomplish within a twelve month period, including benchmarks or short term objectives.

511 IAC 7-26-2(d) by failing to ensure that professional and paraprofessional staff serving the student shall receive specialized inservice training in the area of the student's disability.

511 IAC 7-27-3(a)(1) by failing to ensure that the case conference committee (CCC) participants include a representative of the public agency, other than the student's special education teacher, who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of the student.

511 IAC 7-27-1(b) by failing to provide information and training that addresses the requirements of 511 IAC 7 to ensure public agency staff have the necessary knowledge to ensure the implementation of the CCC process.

FINDINGS OF FACT:

1. The Student is eleven years old and is eligible for special education and related services due to an autism spectrum disorder and a communication disorder.
2. The Student's individualized education program (IEP) incorporates a 5-part list of Behavior Supports/Strategies (the Behavior Supports/Strategies Plan) including:
 - Part A. Staff strategies
 - Part B. Social Worker strategies
 - Part C. Student's strategies
 - Part D. Behavior Plan: Four steps, listed chronologically, that are to be followed if the Student's behaviors cause class disruption or if the Student exhibits physical aggression toward

others (pinching, pushing, yelling, grabbing, stomping). The fourth step of Part D is to call the Student's parent(s) and make a joint decision for the Student to either remain in isolation to complete work or to be taken home. "This is not to be considered a change of placement or school suspension."

Part E. Crisis Plan: Two possible actions (supervised study session or immediate out-of-school suspension) to be taken if the Student demonstrates "more extreme physical aggression (kicking, punching, stabbing with an object)." A supervised study session is to be utilized when the Student's behavior is "reactionary/defensive (as determined by witnessing staff)." An immediate suspension is to be utilized when the Student's behavior is "deliberate/non-reactionary (as determined by witnessing staff)."

The Parent's understanding is that supervised study sessions are required by the Part E Crisis Plan when the Student's behavior is a manifestation of the disability, whereas a suspension may be imposed for behavior that is not a manifestation of the disability.

3. On January 8, 2004, the Student was suspended from school for 2 days. The incident that gave rise to the suspension began during physical education (PE) class. The PE teacher implemented the Part D Behavior Plan by sending another student to bring the Teacher of Record (TOR) who is one of the designated implementers of the Behavior Plan. Because of a prior incident in which the Student had broken his eye glasses, the PE teacher took possession of the Student's glasses and then gave the glasses to the TOR. The TOR implemented the Part D Behavior Plan by escorting the Student to another area where the Student was encouraged to use calming activities. The TOR telephoned the school secretary to ask that the Parents be contacted for approval to return the Student's glasses under circumstances that might result in breakage of the glasses. The Student's behavior with the TOR included yelling, grabbing, swinging at the TOR, pulling on the TOR's arm, pulling on the TOR's clothes, getting on a table, kicking, and shoving desks around.
4. The Principal witnessed some of the Student's behavior with the TOR. The Principal perceived the situation as a crisis and called in the School Crisis Team. The School Crisis Team used a physical intervention (team control position) to restrain the Student. As the school secretary had not been able to reach the Student's Parent by phone, the Principal telephoned the Student's other Parent and asked that Parent to come to the school. The Parent arrived, returned the Student's glasses, and calmed the Student. The Parent asked the Principal to leave the room. The TOR and the Parent continued working with the Student. The Principal returned with the Notice of Suspension that described the Student's behavior as "attempted to hurt another student, called the teacher 'a jackass,' attempted to hurt resource teacher, and required restraint," which violated school rules against "name-calling, violence toward student [and] adults." There is no documentation to show whether the Student was "kicking, punching, stabbing with an object" as specifically written in Part E of the Student's BIP. It is undisputed that the last step of Part D Behavior Plan (a joint Parent-School decision) was not implemented.
5. The School conducted a functional behavioral assessment over a period of time beginning in April, 2002, and concluding in November, 2002. During the 2002-2003 school year, the Student was suspended once. On March 14, 2003, the case conference committee (CCC) considered strategies, including positive behavioral interventions and supports, to address the Student's behavior. These strategies, as incorporated into the annual goal/objectives and the Behavior Supports/Strategies Plan of the IEP, were agreed to by the Parent. Parts A, B, C, D, and E of the Behavior Supports/Strategies Plan include the following components:
 - a. Description of how the Student's environment will be altered [e.g., reduce sensory (noise) overload; go to a designated time out area; special education staff or social worker will take the Student to a neutral place];

- b. Identification of positive behavioral intervention strategies [e.g., encourage input and choice when possible (give the illusion of control by giving choices; encourage the Student to use his strategies to calm down and offer verbal support to assist);
- c. Specification of which skills will be taught in an effort to change a specific pattern of behavior [e.g., teach/rehearse/model social behaviors such as: greetings, compliments, compromises, negotiation skills].

6. The Student's IEP contains a single goal, as follows:

The Student will demonstrate level 2 behaviors in all curricular areas 80% of the time, as per constructed class rubric, by May 2004.

The rubric specifies four behavior areas (participation and effort, following directions and class rules, staying on task, and respectful behavior) and defines 3 levels for each behavior area. For example, with respect to participation and effort, the rubric described the 3 levels as follows:

Level 1: No participation – needs constant prompts/reminder to participate;

Level 2: Requires some prompting to participate; and

Level 3: Fully participates – excels.

There are four objectives listed under the annual goal, each of which was further described by specific skills to be learned, with comments that include cross-reference(s) to the Behavior Supports/Strategies Plan.

- 7. Using the rubric, the special area teachers (art, music, and physical education) provide a rating (1, 2, or 3) in each of the four specified behavior areas for each class period. The teachers may also add comments. It is undisputed that the class rubric was used only in the special area classes. The ratings provided by the special area teachers are collected weekly and tallied by the TOR. The Parent questions the accuracy of the rating process, given its subjectivity.
- 8. The Student's IEP identifies the following persons as implementers of the Behavior Supports/Strategies Plan: classroom teacher, classroom assistant, special education staff, and social worker. The Student's IEP identifies the following persons as implementers of goals and services: GE (general education teachers), SE (special education teacher), SLP (speech/language pathologist), and SW (social worker). The Principal is not designated as an implementer of the Behavior Supports/Strategies Plan or the IEP. The Complainant has not raised questions about the training in autism received by the individuals identified as implementers, but has raised questions about the training of the Principal, the PE Teacher, and the paraprofessionals who supervise the lunchroom.
- 9. The School has provided documentation that the Principal attended a specialized inservice training in autism. Although the School asserts that the PE Teacher also attended a specialized inservice training session on autism, the School is unable to locate documentation of the PE Teacher's attendance. However, the School has documented that at the beginning of the 2003-2004 school year the TOR met with the PE Teacher to provide information about autism generally and specifically regarding the Student. The TOR put together a booklet of materials on autism and provided the booklet to the special area teachers including the PE Teacher. As the TOR is the conduit for communication between the PE Teacher and a private adaptive PE teacher, the TOR and the PE Teacher continue to meet regularly.
- 10. The paraprofessional supervising the Student's lunch period is the TOR's assistant who has completed all 5 modules of a multi-part training program for paraprofessionals. A second paraprofessional has completed 4 of the 5 modules. These inservice training sessions include information about autism including hand-outs as well as an overview of the School's autism manual. In addition, the School has documented the TOR's meeting at the beginning of the 2003-2004 school year with the paraprofessionals regarding the Student.

11. Student was suspended from school on September 23 and 24, 2002. As of October 9, 2002, this suspension was removed from the Student's record. Some of the communications regarding compensatory services occurred outside the CCC process. The Parent sought compensatory services and initially sought payment for services to be provided by a private provider. The Principal did not believe that she had the authority to commit to paying for services offered by a private provider, and in any event the Principal's proposal focused on academic instruction missed due to the suspension, whereas the Parent sought compensatory time to work on social skills. On January 27, 2003, the CCC considered compensatory services and did not reach agreement on specific services. On March 14, 2003, the Principal was called from the CCC meeting prior to reaching the subject of specific compensatory services. The CCC agreed to reconvene. On April 23, 2003, the CCC revisited the subject of compensatory services. Although it had been agreed previously that compensatory services would be provided, agreement on specific services was not reached, and the Principal terminated the CCC meeting. The Principal attended all CCC meetings. The School and the Parent did not initiate a due process hearing or mediation to resolve the disagreement.
12. The CCC reconvened on May 23, 2003. At the May 23rd CCC meeting, a staffperson from the Special Education Department office served as the facilitator, and the Principal continued to serve as the representative of the school corporation. Agreement was reached regarding a plan for compensatory services specially designed for the Student.
13. The Principal received training in CCC procedures including a training session held August 7, 2000.

CONCLUSIONS:

1. Findings of Fact #2, #3, and #4 indicate that Part D (Behavior Plan) of the Behavior Supports/Strategies Plan was implemented up to the point that the School shifted to Part E (Crisis Plan) pursuant to the School's observation of the Student's behaviors. Part D of the Behavior Supports/Strategies Plan addresses physical aggression, while Part E of the Behavior Supports/Strategies Plan addresses more extreme physical aggression. Although Complainants may disagree with the School's implementation of Part E, the consequences identified under Part E may be implemented based upon the Student's behavior as determined by witnessing staff. Furthermore, it is beyond the scope of a complaint investigation to determine whether the Student's behavior constituted "physical aggression" or "more extreme physical aggression." Similarly, a determination of whether the Student's behavior was "reactionary/defensive" or "deliberate/non-reactionary" is also beyond the scope of a complaint investigation. This BIP deals only with physical aggression and does not cover the totality of all behaviors and does not prohibit the Principal from exercising his/her authority to suspend students. Therefore, no violation of 511 IAC 7-27-7(a) occurred.
2. Findings of Fact #5 indicate that the Student's Behavior Supports/Strategies Plan meets the requirements of a behavioral intervention plan as defined in 511 IAC 7-17-8. Finding of Fact #5 also indicates that the Student had not been suspended a sufficient number of days to trigger the requirements of 511 IAC 7-29-5. When the development or revision of a behavioral intervention plan is not mandatory under 511 IAC 7-29-5, the CCC may consider strategies, including positive behavioral interventions and supports, to address a student's behavior, and may incorporate a statement of those strategies into an IEP, without regard to the definition of behavioral intervention plan. Therefore, no violation of 511 IAC 7-27-6(a)(12) occurred.
3. Findings of Fact #6 and #7 indicate that the IEP goal is a measurable goal that describes what the student can be expected to accomplish within a twelve month period, includes short term objectives, and in addition incorporates the agreed method of measurement. When the CCC has agreed upon the

use subjective criteria/ratings, it is beyond the scope of a complaint investigation to question subjective data. Therefore, no violation of 511 IAC 7-27-6(a) (2) occurred.

4. Finding of Fact #8, #9, and #10 indicate that professional and paraprofessional staff serving the Student have received inservice training in autism. Therefore, no violation of 511 IAC 7-26-2(d) occurred.
5. As all principals are qualified to supervise the provision of specially designed instruction, Findings of Fact #11 and #12 indicate that the CCC participants included a representative of the public agency. The representative of the public agency is not required to have the authority to commit public agency resources. Further, Finding of Fact #12 indicates that the disagreement has been resolved. Therefore, no violation of 511 IAC 7-27-3(a)(1) occurred.
6. Finding of Fact #13 indicates that the public agency provided information and training that addresses the requirements of 511 IAC 7 to ensure public agency staff have the necessary knowledge to ensure the implementation of the CCC process. Therefore, no violation of 511 IAC 7-27-1(b) occurred.

The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above.